

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2777 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

CHETAN STEEL

Appearance:

MR KETAN A DAVE for Petitioner

MR JIVANLAL G SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/01/97

ORAL JUDGMENT

Heard learned counsel for the parties. The learned counsel for the petitioner filed on the record of this case, letter of the Assistant Commissioner of Central Excise, Jamnagar, dated 23rd December 1996, and prayed for taking this document on record, to which the learned counsel for the respondent has no objection.

Order accordingly. The aforesaid letter is taken on record of this file.

2. The facts of the case in brief are that one vessel, by the name of M.V.Uniluck, arrived at Rozi Bunder, Jamnagar on 29th September 1982 for loading export cargo from Bhavnagar. After arrival at Rozi Bunder it did take some cargo for export but because of non cooperation of the members of the crew, the ship could not leave and it had to unload the cargo and had to shift the cargo to another ship and it remained idle and could not leave. One Rahematkhan and 16 others who were the members of the crew and who were on strike, instituted Civil Suit No.44 of 1983 in the Court of Civil Judge (Senior Division), Jamnagar against their Greek owner for recovery of wages. The aforesaid suit as per the case of the petitioner, came to be decreed by the Civil Court. The Decree Holders put the decree in execution by filing Special Darkhast No.7 of 1984 in the Court of Civil Judge, Senior Division, Jamnagar against the vessel, M.V. Uniluck. On 31st March 1984, an application was submitted by the Decree Holders for attachment of ship, M.V. Uniluck and accordingly the said ship was ordered to be attached by the Civil Judge, Senior Division, Jamnagar. The said ship was to be auctioned and the Superintendent of Customs Department at Jamnagar was also sent a notice thereof. The petitioner wrote a letter to the Civil Judge, Senior Division, Jamnagar, and informed that whoever would purchase the ship at public auction will be liable to pay the customs duty leviable under the provisions of the Customs Act and that such duty shall be payable at the port where the ship is taken for breaking. It was also clarified that the liability would arise if the ship is purchased for breaking in India. On 21st April 1984, auction was held and the respondent herein purchased the said ship. The respondent made a request to the Civil Judge, S.D., Jamnagar, to instruct the port authorities and the customs authority to allow him to sail the ship for Sachana Beaching Yard for scrapping. The learned Civil Judge, S.D., Jamnagar, served a notice to the petitioner on the application of the respondents calling upon as to why interim direction, as prayed by the respondent, shall not be granted. The petitioner appeared before the Civil Judge, S.D., Jamnagar, and made written submissions and the Civil Judge, S.D., Jamnagar, did not pass any order on the aforesaid application of the respondent. On 2nd May 1984, the respondent filed another application for appointment of Receiver and for shifting the vessel from Bedi Port to Sachana Beaching Yard. This application was opposed by the petitioner by making oral submissions.

However, the learned Civil Judge, S.D., Jamnagar, ordered the Port Officer at Jamnagar and the petitioner that no hindrance or obstruction should be caused by them while the respondent removes the vessel, M.V. Uniluck from Bedi port to Sachana Beaching Yard. A request has been made by the petitioner to the learned Civil Judge, S.D., Jamnagar, to stay the aforesaid order but as the respondent has given undertaking to the effect that he will pay the customs duty which is determined and which he is liable to pay according to law, no such order has been passed. The respondent has given undertaking which was full of conditions which were not acceptable to the petitioner and which were such under which the respondent was likely to avoid the liability to pay customs duty and therefore an application was given by the petitioner to the Civil Judge, S.D., Jamnagar, opposing the appointment of Receiver. On 15th May 1984, the learned Civil Judge, S.D., Jamnagar, granted permission to the respondent to break the ship after furnishing bond and undertaking in the Court within 15 days. The Court has further ordered, may be which is stated to be clarificatory in nature, that whatever amount payable towards the customs duty or other Government dues will be paid from the remaining amount of purchase price of the ship which will be deposited by the purchaser, i.e. the respondent herein. The respondent has further prayed for order for delivery of possession of ship which has been taken to Sachana Beaching Yard for breaking. This application found favour of the Civil Judge, S.D., Jamnagar, who passed an order on 15th May 1984, directing that on execution of personal bond by the respondent and on giving undertaking, the possession of the vessel should be handed over to the respondent. On further application, the Court has ordered to deliver the possession without further undertaking as the respondent had already given an undertaking earlier. The petitioner received a notice from the Court of Civil Judge, S.D., Jamnagar, to the effect that in the Special Darkhast No.7 of 1984, the vessel is purchased by Chetan Steel through Shri Dhirubhai Shah and the possession of the said ship was allegedly handed over to said Shri Dhirubhai Shah and the original claimants viz. Rahematkhan and others have no claim over the said ship and that such notice was issued to the present petitioner for information and for taking necessary procedural steps. The petitioners called upon the respondent that since the ship is purchased for the purpose of breaking, the same could not be broken before observing and fulfilling the requirements of the Customs Public Notice No.6/1983 dated 2nd April 1983. The respondent was further required to produce letter of allotment in respect of the said ship issued by Metal

Scrap Trading Corporation Limited, Calcutta, which is a canalising agency to the effect that the said ship was for the purpose of breaking. The respondent was also required to file bill of entry in respect of the said ship under the Customs Act and to pay duty of custom assessed on the said ship. The respondent has initiated Contempt proceedings on receipt of the aforesaid notice, against the petitioner, and the petitioner submitted a detailed reply to the said application. The respondent instituted Regular Civil Suit No.439 of 1984 in the Court of learned Civil Judge, S.D., Jamnagar, for declaration and injunction to the effect that the ship in question was not "imported goods" and was free from encumbrances and also for an injunction against the present petitioner restraining them from obstructing the present respondent from breaking the ship and from recovering any customs duty or any other duty recoverable. An application has also been filed by the respondent in the said suit for interim relief against the present petitioner from obstructing the respondent from removing the vessel and from breaking the vessel and from disposing of the vessel and from recovering the customs duty during the pendency of the suit. That application was contested by the petitioner. The learned Civil Judge, S.D., Jamnagar, passed an order on the application directing the petitioner to make provisional assessment of customs duty of the said vessel within 15 days and also directing the respondent to pay the customs duty as per provisional assessment within 75 days from the date of provisional assessment.

3. In this Special Civil Application, the petitioner has challenged various orders made by the Civil Court in the Special Darkhast No.7 of 1984. On 24th May 1984, this petition was admitted and interim relief in terms of para 23(B) was granted.

4. I fail to see any logic and reason in the prayer of the petitioner for stay of the order of the learned Civil Judge wherein the petitioner was directed to make provisional assessment of customs duty and the respondent was directed to pay that amount. The prayer of the nature for stay of this order in my view is detrimental to the petitioner itself. In case when the vessel was permitted to be broken, the petitioners were concerned with customs duty only and the Court has made a reasonable order to make provisional assessment and further reasonable order asking the respondent to make payment of the duty thereof. That exercise should have been undertaken by the petitioner instead of filing this petition before this Court. The petitioner is only

concerned with customs duty which is legally leviable on the vessel, but instead of ensuring assessment of customs duty and recovery of the amount of the duty assessed, the petitioner prayed for stay of that order. However, now much more events would have subsequently taken place and as such, nothing substantial survives in this Special Civil Application. It is not in dispute that the provisional assessment has been made by the petitioner of the customs duty payable by the respondent and the substantial amount to the extent of Rs.30 lacs in cash and Rs.6 lacs by way of encashing bank guarantee, have been received by the petitioner. The dispute now only remains for the amount of Rs.4,06,596.05. From the letter of the Assistant Commissioner of Central Excise, Jamnagar, dated 23rd December 1996, it comes out that the appeal filed by the respondent against the order of adjudication passed by the Assistant Collector of Customs, Porbandar, has been decided by the Collector of Customs (Appeal), Bombay, on 12.1.87. The order of the lower authorities has been set aside and the matter has been directed to be remanded for de-novo consideration and to redecide the case after giving personal hearing to the respondent. It is really a sorry state of affairs that the Assistant Commissioner of Central Excise, Jamnagar, who is a concerned officer, is unable to say what ultimately has been decided by the Assistant Collector of Customs, Porbandar, on remand of the appeal. It is difficult to appreciate the approach of the said officer to say, "nothing is forthcoming from the record to show that the case has been redecided". Instead of relying only on the record, the Assistant Commissioner of Central Excise, Jamnagar, should have taken all caution and should have put all efforts to know what ultimately has transpired in the matter on remand of the same by Collector of Customs (Appeal), Bombay. That cursory and casual approach of the Assistant Commissioner of Central Excise, Jamnagar, who is concerned with levy and collection of revenue deserves to be deprecated. None of the parties are in a position to say what ultimately has been adjudicated in the matter regarding the customs duty to be paid by the respondent. The respondent is not in existence nor is there any property of the firm available to execute the orders of recovery of Government dues. This is also creation because of inaction and omissions on the part of the concerned officers to keep watch and reach to the respondent and its property. This is how crores of rupees of customs duty or Central Excise are being rendered unrecoverable. Proper precautions and safeguards are to be taken in such matters. Be that as it may. Now nothing survives in this Special Civil Application. The adjudication of the customs duty

payable by the respondent has been made and substantial amount has also been recovered by the petitioner. The matter has been taken by the respondent in appeal and the same was allowed and the matter was remanded and what ultimately has transpired, has not been brought on record.

5. Taking into consideration the totality of the facts of the case, this writ petition fails and the same is dismissed. Rule discharged. Interim relief, granted by this Court stands vacated. However, dismissal of this writ petition will not come in the way of the petitioner to recover the amount of customs duty remaining unpaid by the respondent. No order as to costs.

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